

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lindsay Broughel	Team: Team # 8	CCRB Case #: 200905170	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/04/2009 2:45 PM	Location of Incident: § 87(2)(b)	Precinct: 23	18 Mo. SOL 10/4/2010	EO SOL 10/4/2010	
Date/Time CV Reported Sat, 04/04/2009 3:05 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 04/04/2009 3:05 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jhovanny Ysabel	14828	943976	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Brenda Torres	24811	946333	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.POM Jhovanny Ysabel	Abuse: PO Jhovanny Ysabel questioned § 87(2)(b)	§ 87(2)(b)
B.POM Jhovanny Ysabel	Force: PO Jhovanny Ysabel used a chokehold against § 87(2)(b)	§ 87(2)(b)
C.POM Jhovanny Ysabel	Abuse: PO Jhovanny Ysabel refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)

Synopsis

On April 4th, 2009, at approximately 2:30pm, § 87(2)(b) was leaving § 87(2)(b) a NYCHA building. In the lobby, PO Jhovanny Isabel of PSA 5 stopped § 87(2)(b) and asked him if he lived in the building and to see his identification (**Allegation A**). § 87(2)(b) indicated that his sister lived in the building and provided his ID. PO Ysabel asked § 87(2)(b) to show the officers to his sister's apartment. PO Ysabel, his partner PO Brenda Torres of PSA 5 and § 87(2)(b) took the elevator to the § 87(2)(b) floor. When the elevator doors opened, § 87(2)(b) began yelling for his sister Debbie and stood a few inches from PO Ysabel. PO Ysabel grabbed § 87(2)(b) by the shirt collar (**Allegation B**). At this time, § 87(2)(b)'s sister, § 87(2)(b) and his girlfriend, Edith § 87(2)(b) exited § 87(2)(b)'s apartment. § 87(2)(b) asked PO Ysabel for his shield number, but he did not respond (**Allegation C**). PO Ysabel let go of § 87(2)(b) and wrote him a summons for § 87(2)(b). § 87(2)(b) then went back to his sister's apartment and the officers left.

Mediation was discussed with § 87(2)(b) however, § 87(2)(b) refused to pursue mediation § 87(2)(b)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old black male who stands 5'9" tall and weighs 202 lbs. He has brown hair and brown eyes. On April 4th, 2009, § 87(2)(b) provided a narrative in regards to this incident when filing his initial complaint (Encl. 4a-4b). On April 14th, 2009, § 87(2)(b) provided a phone statement regarding this incident (Encl.5a). On April 16th, 2009, § 87(2)(b) was interviewed by the CCRB (Encl. 6a-6g). § 87(2)(g)

On April 4th, 2009, from about 9:00am to 2:30pm, § 87(2)(b) visited his sister, § 87(2)(b) at her apartment at § 87(2)(b) in Manhattan, in a NYCHA development. When he left her apartment at 2:30pm, § 87(2)(b) exited the elevator in the lobby of the building and saw two uniformed officers, PO1 and PO2, subsequently identified as PO Jhovanny Ysabel and PO Brenda Torres of PSA 5. PO Ysabel, was a Hispanic male about 5'5"-5'6" tall, about 160-170lbs, with black hair and a thin moustache. PO Torres was a Hispanic female about 5'2"-5'3" tall, about 120 lbs, with brown hair in a pony tail, and was about 35 years old. As § 87(2)(b) put his hand on the front door to exit, PO Ysabel approached § 87(2)(b) and said, "Do you live here?" § 87(2)(b) told PO Ysabel that his sister lived in the building and PO Ysabel asked § 87(2)(b) for his identification, which § 87(2)(b) provided (**Allegation A**). PO Ysabel asked him to take them up to his sister's apartment. § 87(2)(b) and the officers got in the elevator and went up to the § 87(2)(b) Floor.

When the doors opened at the § 87(2)(b) Floor, PO Ysabel, stepped out of the elevator. § 87(2)(b) leaned his head out of the elevator, took a step forward, extended his right arm to the right and pointed to where his sister's apartment was at the end of the hallway. When § 87(2)(b) pointed, PO Ysabel grabbed § 87(2)(b) by the front collar of his shirt using both hands with his fingers wrapped around § 87(2)(b)'s shirt and pinching part of the skin on his neck (**Allegation B**). § 87(2)(b) stated that his breathing was restricted for about 30 seconds, but he was still able to breathe. § 87(2)(b) began yelling for his sister by saying, "§ 87(2)(b)" PO Ysabel threw § 87(2)(b) up against the wall opposite from the elevator, so that § 87(2)(b)'s left shoulder and left side of his head hit the wall. He then swung § 87(2)(b) back towards the elevator. § 87(2)(b) provided conflicting accounts of when § 87(2)(b) and his girlfriend, § 87(2)(b) exited their apartment, stating that they came out before he was thrown up against the wall, while also stating that he did not begin yelling for his sister until after he had been thrown against the wall. § 87(2)(b) also stated during the interview that when PO Ysabel initially grabbed § 87(2)(b) he

tried to push PO Ysabel away from him, but later stated that he did not resist PO Ysabel at all. During his phone statement, § 87(2)(b) claimed that PO Ysabel called him a “motherfucker.”

PO Ysabel let go of § 87(2)(b) asked PO Ysabel for his badge number, a request to which PO Ysabel did not respond (**Allegation C**). In his phone statement, § 87(2)(b) did not state that § 87(2)(b) asked PO Ysabel for his shield number. PO Ysabel then wrote § 87(2)(b) a summons for § 87(2)(b). PO Ysabel gave the summons to § 87(2)(b) and then § 87(2)(b) went back to his sister’s apartment with her.

§ 87(2)(b) did not have any verbal or physical interaction with PO Torres and did not believe that she spoke with § 87(2)(b) or § 87(2)(b). § 87(2)(b) did not see any other people in the hallway on the § 87(2)(b) floor, however, § 87(2)(b) and § 87(2)(b) told § 87(2)(b) that they had seen one woman on the floor open her door and stick her head out. § 87(2)(b) stated that he has consistently had problems with officers in this building before for the past year or so.

As a result of this incident § 87(2)(b) had a scratch on the front left side of his neck. He did not seek medical treatment for the scratch. § 87(2)(b) stated in his initial complaint that he had swelling on his neck, but did not mention a scratch.

Results of Investigation

Attempts to Contact Additional Victims/Witnesses

§ 87(2)(b) was identified as a victim in this incident. Between April 29th, 2009 and May 20th, 2009, § 87(2)(b) was sent two letters and called five times. On May 15th, 2009, § 87(2)(b) answered the phone and stated she was “too tired” and abruptly hung up. § 87(2)(b) has not contacted the CCRB in order to provide an official statement in regards to this incident and was therefore uncooperative with the investigation.

§ 87(2)(b) was identified as a witness to this incident. § 87(2)(b) failed to appear for two scheduled interview appointments on May 22nd, and May 29th, 2009, and was therefore uncooperative with the investigation.

Officer Statements

PO Jhovanny Ysabel

Summons # § 87(2)(b) (Encl. 7a)

Summons § 87(2)(b) was issued by PO Ysabel, tax number 943476 to § 87(2)(b) on April 4th, 2009 at approximately 2:30pm inside of § 87(2)(b). § 87(2)(b) was charged with § 87(2)(b).

Memo book (Encl. 8a-8d)

1415: conducting vertical at § 87(2)(b). 1420: 1 male stopped inside of location, § 87(2)(b). § 87(2)(b) 1430: summons issued for § 87(2)(b).

CCRB Statement (Encl. 9a-9b)

On June 18th, 2009 PO Jhovanny Ysabel was interviewed by the CCRB. PO Ysabel is a § 87(2)(b)-old Hispanic male who stands 5’8” tall and weighs 190 lbs. He has brown hair and brown eyes. On April 4th, 2009, PO Ysabel worked a tour from 1030 x 1905 and was assigned to PSA 5 post 438 and was working with partner PO Brenda Torres. PO Ysabel was in uniform and working on foot.

On April 4th, 2009, PO Ysabel and PO Torres conducted a vertical patrol at § 87(2)(b) a NYCHA development. PO Ysabel and PO Torres were standing in the lobby of the building when § 87(2)(b) exited the elevator and walked towards the front door. PO Ysabel stated that because he patrols § 87(2)(b) every tour that he has worked for the past two years, he recognizes a lot of the residents that live there. PO Ysabel had never seen § 87(2)(b) in § 87(2)(b) before the date of the incident. PO Ysabel approached § 87(2)(b) and asked him if he lived in the building. Initially, § 87(2)(b) stated

that he did live in the building. PO Ysabel asked for § 87(2)(b)'s identification, and § 87(2)(b) provided photo identification that did not contain his address. § 87(2)(b) then stated that his sister lives on the § 87(2)(b) floor. PO Ysabel, PO Torres and § 87(2)(b) took the elevator to the § 87(2)(b) floor. PO Ysabel did not recall any conversation exchanged between he and § 87(2)(b) while waiting for the elevator or inside the elevator.

The elevator reached the § 87(2)(b) floor and PO Ysabel asked § 87(2)(b) to wait in the elevator, while his partner went to speak to the residents of the apartment. § 87(2)(b) exited the elevator. At this time PO Ysabel got out of the elevator and requested that § 87(2)(b) stay inside the elevator. § 87(2)(b) then moved towards PO Ysabel and got into PO Ysabel's face and began screaming at the top of his lungs, "§ 87(2)(b)!" § 87(2)(b) was only a couple of centimeters away from PO Ysabel's face. PO Ysabel told § 87(2)(b) to stop yelling. PO Ysabel also told § 87(2)(b) to calm down two times and he would not. At this time, PO Ysabel grabbed § 87(2)(b) with two hands, by his shirt around his chest area and placed him with his back against a wall on one side of the hallway by extending his arms. PO Ysabel explained that he needed to get § 87(2)(b) out of his personal space because he felt threatened by him. PO Ysabel did not forcefully put § 87(2)(b) against the wall. PO Ysabel never put § 87(2)(b) in a chokehold and never grabbed § 87(2)(b) by the neck. PO Ysabel did not recall referring to § 87(2)(b) as a "motherfucker." PO Ysabel also stated that he never threw § 87(2)(b) up against a wall. While § 87(2)(b) was up against the wall, he continued to yell at PO Ysabel and PO Ysabel told § 87(2)(b) to calm down. Three or four residents on the floor opened the doors of their apartments, but did not exit their apartments.

Two women, who PO Ysabel believed were § 87(2)(b)'s mother and sister, exited the apartment into the hallway and § 87(2)(b) stopped screaming. At this time, PO Ysabel let go of § 87(2)(b). PO Ysabel explained what was going on to § 87(2)(b)'s sister. PO Ysabel wrote out a summons for § 87(2)(b) for disorderly conduct and returned § 87(2)(b)'s identification to him. § 87(2)(b)'s sister asked PO Ysabel for his name and shield number and PO Ysabel pointed to his shield and also stated that all of his information would be on the summons. PO Ysabel never said his name or shield number aloud.

Witness Officer Statements

PO Brenda Torres

Memo book (Encl. 10a-10d)

1415: vertical started at § 87(2)(b). 1420: 1 male stopped in § 87(2)(b) lobby. 1430: summons served by PO Ysabel for § 87(2)(b).

CCRB Statement (Encl. 11a-11b)

On June 19th, 2009, PO Brenda Torres was interviewed by the CCRB. PO Torres is a § 87(2)(b)-old Hispanic female who stands 5'3" tall and weighs 135 lbs. She has black hair and brown eyes. On April 4th, 2009, PO Torres worked a tour from 1030 x 1905 hours and was assigned to PSA 5 post 438. PO Torres was working in uniform and on foot with PO Ysabel.

On April 4th, 2009, at approximately 2:15pm, PO Torres and PO Ysabel had conducted a vertical patrol at § 87(2)(b). PO Torres and PO Ysabel were standing in the lobby of the building when § 87(2)(b) exited the elevator and went to walk out of the building. PO Torres and PO Ysabel work in the building every day and PO Torres did not recognize § 87(2)(b) on the date of the incident. PO Torres and PO Ysabel stopped § 87(2)(b) for criminal trespass. § 87(2)(b) was asked if he lived in the building. § 87(2)(b) began screaming, stating that the officers were harassing him and that this happens to him everyday. § 87(2)(b) indicated that he did not live in the building and one of the officers asked him to provide identification. § 87(2)(b) provided identification. The officers asked § 87(2)(b) what apartment he came out of and § 87(2)(b) said that he would show them where he came from. PO Torres, PO Ysabel and § 87(2)(b) took the elevator to the correct floor. In the elevator, § 87(2)(b) continued to scream about the police stopping him. When the elevator doors opened, § 87(2)(b) began calling out for his family members.

§ 87(2)(b) got really close to PO Ysabel, standing about 3-5 inches from his face. § 87(2)(b) was yelling, "They are harassing me!" and was calling for someone to come out of the apartment. At this time, § 87(2)(b) was moving his hands around by his upper body. PO Ysabel put up his hand and forearm against § 87(2)(b)'s chest to move him back and give PO Ysabel some space between him and § 87(2)(b). PO Ysabel never put § 87(2)(b) in a chokehold and never threw § 87(2)(b) up against a wall or pushed § 87(2)(b). PO Ysabel never grabbed § 87(2)(b) by the neck. PO Ysabel never called § 87(2)(b) a "motherfucker" and there was no profanity used by the officers during the incident.

§ 87(2)(b)'s sister came out of the apartment with another relative. No one else from the other apartments on the floor came out into the hallway or opened their doors to see what was going on. PO Torres could not recall what words were exchanged between PO Ysabel and § 87(2)(b)'s sister. § 87(2)(b)'s sister wrote down PO Ysabel and PO Torres's information from their shields. § 87(2)(b)'s sister then asked PO Ysabel for his shield number and PO Ysabel told her that the information would be on the summons. PO Ysabel never said his name or his shield number aloud. PO Ysabel wrote § 87(2)(b) a summons for § 87(2)(b).

Police Documents

Roll Call (Encl. 12a-12k)

The Tour 2 roll call for PSA 5 on April 4th, 2009 showed that PO Ysabel and PO Torres were working together and were assigned to POST.

SPRINT Job number S08551 (Encl. 13a)

SPRINT Job number S08551 shows that sector 23HA438 arrived at § 87(2)(b) at 2:14pm. At 4:23pm unit 23HA438 called in a 10-91 [non-crime corrected] and at 2:40pm, sector 23HA 438 called in a 10-96 [summons served] at § 87(2)(b).

Disposition of Summons § 87(2)(b) 5 (Encl. 16a)

The disposition of summons number § 87(2)(b) 5 could not be obtained.

Notice of Claim (Encl. 17a)

There is no notice of claim on file for § 87(2)(b) in regards to this incident.

Civilian Criminal Conviction History (Encl. 15a-15k)

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History of PO Ysabel (Encl. 2a)

PO Jhovanny Isabel has no substantiated CCRB allegations against him in his 2 year tenure with the NYPD.

Conclusions and Recommendations

Officer Identification

PO Ysabel was identified by the summons he issued to § 87(2)(b) during the incident. The roll call from PSA 5 showed that PO Ysabel was working with PO Torres on the date of the incident. PO Ysabel and PO Torres confirmed in the CCRB statements that they were the officers that interacted with § 87(2)(b) on April 4th, 2009.

Undisputed Facts

It is undisputed that PO Ysabel questioned § 87(2)(b) in the lobby of § 87(2)(b) a NYCHA building. It is undisputed that PO Ysabel grabbed § 87(2)(b) by the shirt collar. It is also undisputed that § 87(2)(b) asked PO Ysabel for his shield number.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

§ 87(2)(b) indicated in all of his statements that when PO Ysabel asked § 87(2)(b) if he lived in the building, he informed PO Ysabel that he did not live in the building, but that his sister, § 87(2)(b) lived in the building. PO Ysabel, however, stated that when he asked § 87(2)(b) if he lived in the building, § 87(2)(b) initially stated that he lived in the building and only upon further questioning acknowledged to PO Ysabel that his sister lived in the building. Lastly, PO Torres stated that upon being asked if he lived in the building § 87(2)(b) began yelling about being harassed by the police and then subsequently stated that he did not live in the building. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that he leaned out of the elevator towards PO Ysabel and PO Ysabel grabbed § 87(2)(b) by the shirt collar and neck, restricting his breathing for about 30 seconds. PO Ysabel stated that when § 87(2)(b) was yelling and being non-complaint, he grabbed § 87(2)(b) by the shirt collar. PO Ysabel denied grabbing § 87(2)(b) by the neck or putting him in a chokehold. PO Torres stated that when § 87(2)(b) was standing a few inches from PO Ysabel yelling, PO Ysabel pushed § 87(2)(b) away from his body with one arm against § 87(2)(b)'s chest and denied that PO Ysabel put § 87(2)(b) in a chokehold. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) did not allege that PO Ysabel refused to provide his shield number to § 87(2)(b) in his initial statement or in his phone statement. In § 87(2)(b)'s official CCRB statement, he stated that § 87(2)(b) asked PO Ysabel for his shield number and PO Ysabel did not respond verbally. § 87(2)(b) and § 87(2)(b) were uncooperative with the investigation. § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(b) alleged in his phone statement that PO Ysabel referred to him as a “motherfucker” during the incident. § 87(2)(b) however, did not make this allegation in his official statement. § 87(2)(g)

Allegation A. PO Jhovanny Ysabel questioned § 87(2)(b)

PO Ysabel questioned § 87(2)(b) as to whether he lived in the building and subsequently to see his identification as he was exiting § 87(2)(b) in Manhattan, a building that is part of the Taft NYCHA Development.

Officers are permitted to request information from an individual in a trespass affidavit building as long as the request for information is based upon “some factor in addition to the ‘no trespass’ signs posted” in the building (See *Kamins Search and Seizure*, Encl. 1c-1e). Officers are required to have an “objective credible reason” to approach an individual and ask them questions regarding their conduct or presence (*People v. De Bour* 40 N.Y.2d 210 (1976), Encl. 1a-1c). In one case where an officer had three times as

much experience patrolling a public housing development as PO Ysabel did in this case, a request for information from an individual that the officer did not recognize was found to be justified (People v. Thompson 260 A.D.2d 242, Encl. 1L). The In the case of People v. Holland, NYLJ 5/2/97 (Encl. 1h-1k), the New York Supreme Court found that although the officers had the authority to enter a trespass affidavit building to conduct a vertical, “this authority did not permit the police to request information from an individual observed merely exiting the building. Even in city-owned buildings, a person’s mere presence is insufficient.”

§ 87(2)(g)

[REDACTED]

Allegation B. PO Ysabel used a chokehold against § 87(2)(b)

PO Ysabel and § 87(2)(b) provided conflicting accounts of whether PO Ysabel put § 87(2)(b) in a chokehold during the incident. § 87(2)(g)

[REDACTED]

Allegation C. PO Ysabel refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) was uncooperative with this investigation. § 87(2)(g)

[REDACTED]

Investigator:	Lindsay Broughel	Date:
Supervisor:		Date:
Reviewed by:		Date:
Reviewed by:		Date: